IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.8/2003

State of Goa,
through Police Officer,
Ponda Police Station,
Ponda, Goa. ..... Appellant.

V/s.

1. Harichandra Jalmi,
s/o. Shankar Jalmi,
r/o. H.No.96/9/1,
Zariwada, Priol,

2. Shankar Jalmi,
s/o. Atma Zalmi,
R/o. Gaothan Priol.

3.Devidas Satarkar,
s/o. Rama Satarkar,
r/o. Panchame, Priol,

4. Shamba Gawde, (deceased),
s/o. Gopal Gawde,
R/o. Panchame, Priol,

5. Prakash Gawade,
s/o. Budho Gawade,
R/o. Panchame, Priol,

6. Ramchandra Gawade,
s/o. Muno Gawade,
R/o. Panchme, Priol,
Ponda, Goa, H.No.567,

7. Surya Gawade,
s/o. Gopal Gawade,
r/o. Panchame, Priol,
H.No.566, Ponda, Goa.

8. Tulshidas Gawade,
S/o. Savalo Gawade,
r/o. Panchame, Priol,
H.No.1012, Ponda, Goa.

9. Yeshwant Adhyapak,
s/o. Pandurang Adhyapak,
R/o. Panchme, Priol,
H.No.47, Ponda, Goa.

10. Sharad Adhyapak,
s/o. Pandurang Adhyapak,
r/o. Panchme, Priol,

Ponda, Goa.

11. Hemant Adhyapak,
S/o. Sharad Adhyapak,
R/o. Panchme, Priol,
Ponda, Goa.

12. Anand Adhyapak,
s/o. Sharad Adhyapak,
R/o. Panchme, Priol,
Ponda, Goa.

13. Smt. Vijaya Adhyapak,
D/o. Sharad Adhyapak,
R/o. Panchme, Priol,
Ponda, Goa. ..... Respondents.

Mr. S.N. Sardessai, Public Prosecutor for the State.

Mr. Mahesh Amonkar, Advocate for the respondents.

CORAM : P.V. HARDAS, J.

DATE : NOVEMBER 13, 2003.

ORAL JUDGMENT :

The State being aggrieved by the acquittal of the respondents/accused, of the offences punishable under Sections 143, 147, 148, 447, 435, 341, 324, 326, 427, 504 and 506 (II), read with Section 149 of the Indian Penal Code, passed by Judgment dated 30.9.2002, rendered by the Judicial Magistrate, First Class, Ponda in Criminal Case No.80/S/00/C, has filed the present appeal.

2. The facts, in brief, as are necessary for

the decision of the appeal, are set out hereunder :

On 6.4.2000, P.S.I. Gaude received a telephonic call from PW.1 Vivek Korde regarding the attack which had taken place on him. PW.1 Vivek Korde had also sent a jeep and PW.7 Sanjay Naik for bringing the police at the scene of offence. PW.13 A.S.I. Harish Bhatta, left the Ponda P.S. in jeep for going to the scene of offence. On their way to the scene of offence, they found a group of about 50 to 60 persons coming from the direction of the scene of offence. PW.13 A.S.I. Bhatta alighted from the jeep and inquired from the said persons as to what had happened and those persons had informed him that they were assaulted by Korde and asked him to take them to medical treatment. The injured were, therefore, sent in the same jeep for medical treatment. On reaching the scene of incident, PW.13 ASI Bhatta found that PW.1 Vivek Korde, PW.8 Rajesh Korde, PW.4 Manohar Korde and PW.10 Sanjay Korde had suffered bleeding injuries and, therefore, they were referred to the hospital for medical treatment. On the same day, a complaint at Exhibit PW.1/B of PW.1 Vivek Korde came to be recorded at the Goa Medical College, Bambolim. An offence was registered on 7.4.2000 at about 00.40 hours. A scene of offence panchanama came to be drawn in the presence of PW.2 Vassu Gaonkar and PW.3 Govind Bhandankar. Certain photographs were taken

by PW.11 Head Constable Parab. Said photographs are at Exhibit PW.11/A-colly. Stones and wooden sticks came to be attached from the scene of offence. The scene of offence panchanama is at Exhibit PW.2/A. Vide Exhibit PW.2/B, blood stained clothes of the victims came to be attached. Hurt Certificates of the victims are at Exhibit PW.13/A colly. Accused came to be arrested and the statements of the witnesses came to be recorded. Further to the completion of the investigation, a charge-sheet against the present respondents came to be filed. The learned trial Court vide Exhibit-4 framed charges against the accused. The accused vide their statements at Exhibits-5 to 16 denied their guilt and claimed to be tried. The prosecution, in support of its case, examined 13 witnesses. The accused in their defence examined DW.1 Devidas Satarkar, DW.2 Sanjay Naik and DW.3 Chandrakant Naik. The learned trial Court, on appreciation of the evidence tendered by the prosecution, came to the conclusion that the prosecution had not proved the offences against the accused beyond reasonable doubt and accordingly, acquitted the accused. Hence, the present appeal by the State.

3. The prosecution has examined PW.1 Vivek Korde, PW.4 Manohar Korde, PW.8 Rajesh Korde and PW.10 Sanjay Korde as eye witnesses to the incident. PW.1 Vivek Korde who had lodged the complaint at Exhibit

PW.1/B states that on 6.4.2000 he along with his brothers PW.10 Sanjy Korde, PW.8 Rajesh Korde and his father PW.4 Manohar Korde had gone to their property at Panchmi Priol in their jeep. They had taken an implement called 'poclain' along with them. They started the work at about 4 p.m. and after completion, were returning at about 5.30 p.m. After they had reached a distance of about 50 to 60 metres from the place where they had carried out the work, the persons with stones, sticks and koitas (sickle) stopped them, telling them that the property in which they had carried out the work did not belong to them. PW.1 Vivek therefore, asked those persons to show him the documents of title. Thereupon the said persons started abusing them in filthy language. PW.1 further states that the persons from the locality had earlier closed their drains in the property and had constructed a road thereon. They had also demolished their fencing and had closed the pits which had been dug for new plantation. He also states that they had gone to the property on 6.4.2000 to open the drains and the pits. He then states that he immediately contacted the police station on his mobile phone and also contacted his brother Mahesh Korde who was in Ponda and one Sanjay Naik to bring the police as their lives were in danger. When the people who had gathered came to know that the police had been informed, the mob became violent and accused

No.1 Harichandra stated that the law did not apply to them and started assaulting them. According to PW.1 Vivek all the accused started assaulting him, his two brothers and his father with stones, sticks and koita. He suffered fracture on his right foot and received other injuries on his body. His brother PW.10 Sanjay Korde suffered a fracture on his left arm while his father PW.4 Manohar Korde suffered a cut injury on his palm, while his brother PW.8 Rajesh Korde suffered an injury on his head. According to him, PW.4 Manohar Korde went to the jeep and removed the gun and thereafter the accused ran away. After sometime, the police arrived and the injured were taken to the hospital at Ponda from where they were referred to the Goa Medical College Bambolim. On the next day i.e. on 7.4.2000, at about 3.45 a.m. his brother Mahesh Korde informed him that their plantation in the property was cut and was set ablaze. In the cross examination he has admitted that when they had reached a distance of about 50 to 60 metres from the place where they had carried out the work, they were stopped by the people from the locality. He further states that they were stopped on the internal road. He has admitted as correct that one Arvind Ramchandra Dessai had filed a case against his father for digging up the road. He was shown the photographs marked as Exhibit PW.1/C and he admitted that it was the same trench which had been dug by them.

It was suggested to him that the internal road was being repaired by the people of Priol. He has admitted as correct that 50 to 60 persons who had obstructed them were from the same locality and apart from the accused he was knowing other persons who had not given their description in the report. He has further stated that the entire incident lasted for about one hour and the assault lasted for about 10 minutes. He has admitted that all the 50 to 60 persons were carrying sticks in their hands and accused persons were members of the said group of 50 to 60 persons who had assaulted them.

4. PW.4 Manohar Korde, father of AW.1 Vivek Korde also states that he along with his sons had gone to their property on 6.4.2000 at about 4 p.m. While they were returning, about 50 to 60 persons blocked their way. The machinery used for digging was ahead and they were following their jeep. The people questioned them as to why they had carried the work. The accused were armed with sticks, stones and started abusing them. PW.1 Vivek thereafter telephoned the police and then accused started assaulting them. He states that he suffered an injury on the right hand finger and right leg. He has described the injuries suffered by other injured persons. After about 15 minutes, the police arrived and they were taken to the hospital. During the incident, he had removed a gun and seeing the gun,

accused ran away. In cross examination he has admitted that the driver of the 'poclain' (mechanized shovel for digging trenches) was present at the time of the incident.

5. PW.8 Rajesh Korde also refers to accompanying the other accused to their property and while returning, a mob of 50 to 60 persons obstructed their way. He then states that all the accused were carrying wooden sticks and stones in their hands. All the persons in the mob were similarly armed. He further states that all the accused assaulted his father and his other two brothers on their hands, legs and heads. His father then removed a gun and brandished in front of the accused and the accused seeing the gun ran away. In cross examination he has admitted that some of the accused had lodged a criminal complaint against them in respect of same incident and they were tried for the same. Omission was brought out in respect of his statement that accused No.12 Anand had assaulted him. Similarly, omission was brought out from his statement that accused No.1 was leading the others in the assault and that accused No.2 Shankar, accused No.8 Tulshidas, accused No.9 Yeshwant, accused No.12 Anand, accused No.11 Hemant, accused No.5 Prakash, accused No.10 Sharad and other accused followed him.

6. PW.10 Sanjay Korde also deposes in the similar vain as the other injured witnesses and states that a mob of about 50 to 60 persons had obstructed them. The said persons were carrying sticks, stones and 'koitas' in their hands. His brother PW.1 Vivek telephoned his other brother Mahesh and Ponda Police. Thereafter, the mob started assaulting him. His father brandished the gun and on seeing the gun the accused ran away. He has stated that the accused were amongst the group of about 50 to 60 persons who had assaulted them.

7. The accused had examined DW.3 Chandrakant Naik, a retired A.S.I. He admits that on 6.4.2000 on the basis of the complaint of Anand Adhyapak, an offence vide Crime No.66/2000 was registered. The complaint was against the injured prosecution witnesses. Hurt Certificates of the accused in the present case are at Exhibit PW.2/A colly. The prosecution has examined PW.9 Dr. Nishid Kumar Nair, who had initially examined the injured witnesses and had then referred them to the Goa Medical College, Bambolim. Hurt Certificates of the injured witnesses are at Exhibit PW.9/A colly. Prosecution has also examined PW.6 Mahesh Korde, who states that on the day of the incident, after receiving a telephonic call from PW.1 Vivek Korde, he along with PW.5 Gurudas left for the place of the incident. At about 6.30 p.m., when he reached the place of the

incident, he saw many men, women and children with sticks near the road. The said persons were preparing to go home. On seeing him, they stated that he was not assaulted. He further states that he saw the accused amongst the said 50 to 60 persons. He then went to Ponda at about 8.30 p.m. and returned home. At about 1 a.m. on 7.4.2000 he awoke and went to his property as he had heard some noise. He saw the people from the Village cutting the trees and setting fire to it. He further states that he saw the accused committing the said destruction

8. The learned trial Court, in respect of the injured witnesses, viz. PW.1 Vivek, PW.4 Manohar, PW.8 Rajesh and PW. 10 Sanjay, has observed that these witnesses have made omnibus allegations against the accused without specifying the exact role played by the accused. None of the witnesses has attributed any overt act to the accused. Curiously, none of the witnesses states as to who, from the mob, had actually assaulted them. The FIR contains the names of the accused, but again no specific overt act is attributed to them, apart from the vague allegations that they had assaulted the witnesses. None of the witnesses, in their substantive evidence before the Court, attributed the infliction of any specific injury to any specific accused. In view of the vague and omnibus allegations, the learned trial

Court has declined to rely upon the said witnesses. The learned trial Court also noticed another infirmity in the evidence of the witnesses, viz. that all the injured witnesses i.e. PW.1, PW.4, PW.8 and PW.10 had deposed that the incident occurred soon after PW.1 had telephoned his brother Sanjay Korde and the police. However, PW.6 Mahesh Korde, PW.7 Sanjay Naik, PW.13 ASI Bhatta and PW.5 Gurudas had deposed that they were informed by PW.1 Vivek and that he along with others were assaulted by them. The learned trial Court, therefore, doubted about the genuineness of the incident and gave benefit of doubt to the accused.

9. I have heard Mr.S.N. Sardessai, learned Public Prosecutor and Mr. Mahesh Amonkar, learned Counsel appearing for the respondents. With the assistance of the learned Counsel, I have also perused the evidence of the witnesses examined by the prosecution and the accused. This is an appeal against acquittal and the view taken by the learned trial Court is a possible view, to be taken on the basis of the evidence of the prosecution witnesses. The prosecution witnesses, especially the injured witnesses have made vague and omnibus allegations against the accused. Learned trial Court has also found that a counter case in respect of the same incident had been registered against the injured witnesses on the basis of a report,

lodged by one of the accused. In the said counter case, there is some evidence that the accused and others had received injuries. Learned trial Court has found that in the absence of positive and cogent evidence, it was hazardous to convict the accused. According to me, there is no perversity in the reasonings of the learned trial Court and thus, there is no reason to interfere with the acquittal of the accused even if another view of the evidence was possible. In the light of this, according to me, there is no merit in the appeal and same deserves to be dismissed.

10. Accordingly, Criminal Appeal is dismissed.

P.V. HARDAS, J.

ssm.